

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:07CR10
)	
v.)	
)	
DION L. HAYES,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the court on defendant's motion and amended motion to correct his sentence (Filing Nos. 25 and 29). After a hearing held in this court on February 19, 2009, the court finds that the motions should be granted and that defendant's sentence will be reduced by three months.

Additionally, both of defendant's motions are incorrectly labeled as motions under 28 U.S.C. § 2255. Filing Nos. 25 & 29. These labels are incorrect because the defendant never filed a motion under 28 U.S.C. § 2255. Instead, defendant filed a motion and an amended motion to correct an error in his sentence. Consequently, any § 2255 motion the defendant may subsequently file will not be deemed successive.

IT IS ORDERED:

1. Defendant's motion to correct sentence (Filing No. 25) and amended motion to correct sentence (Filing No. 29) are granted and the defendant's sentence is reduced by three months. The Clerk of the Court is directed to correct the title of these motions to indicate that they are motions to correct sentence, rather than motions under 28 U.S.C. § 2255.
2. Defendant's motion for leave to file in forma pauperis (Filing No. 30) is denied as moot.
3. Case 8:08CV61 shall be closed for statistical purposes by the Clerk of the Court for the District of Nebraska.

DATED this 20th day of February, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge